U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34288172

Date: OCT. 31, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a software application development company, seeks to classify the Beneficiary, a product design director, as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that a beneficiary meets at least three of

the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and authorship of scholarly articles).

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined the Beneficiary did not fulfill any of them. On appeal, the Petitioner maintains that the Beneficiary meets the awards, published material, judging, original contributions, authorship of scholarly articles, and high salary criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, the Petitioner must demonstrate a beneficiary's prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[1]

The Petitioner contends that the Beneficiary's "Flight app was awarded for its UI/UX design and featured as 'Example of Good Design' in the presentation made at Apple's [redacted] in 2014." As evidence of this award, the Petitioner presented a screenshot of the Flight app along with Apple logos stating: "Featured on App Store" and "Featured on [redacted] but the record does not include evidence from Apple stating that the Beneficiary has received a prize or an award for his work. The Petitioner has not demonstrated that having an app "featured" by Apple in such a manner constitutes the Beneficiary's receipt of a nationally or internationally recognized prize or award for excellence in his field of endeavor.

In response to the Director's request for evidence (RFE), the Petitioner presented a letter from P-E-, Director of [redacted] stating:

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

> One of the projects we collaborated on, the [redacted] Online Services App, was a tremendous success, receiving international acclaim and several prestigious awards. Under my direction as the product director, and through [the Beneficiary's] dedicated efforts, the app was awarded a Bronze at the [redacted] for Best Mobile Apps and a Gold at the [redacted] for Mobile App Awards.

The Petitioner also submitted two pages from the [redacted] Blog" listing 17 awards received by [redacted] but this evidence does not identify the Beneficiary as the recipient of a [redacted][2] The record does not include sufficient corroborating evidence from the presenting organizations to support P-E-'s assertions that the Beneficiary received a Bronze at the [redacted] for Best Mobile Apps and a Gold at the [redacted] for Mobile App Awards. Unsupported assertions have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022). Nor has the Petitioner demonstrated the significance of either a Bronze [redacted] or Gold [redacted] in the Beneficiary's field of endeavor. Without sufficient evidence showing that the Beneficiary has received a nationally or internationally recognized prize or award for excellence in the field, the Petitioner has not established the Beneficiary meets this regulatory criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[3] The published material should be about the person, relating to the person's work in the field.[4] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[5]

As evidence for this criterion, the Petitioner submitted articles, entitled "app for iPhone," [redacted] and [redacted] While the Petitioner provided these articles discussing various apps he played a role in designing, this material is not about him. The language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires "[p]ublished material about the alien." *See, e.g., Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor).

With respect to this criterion, the Director stated: "The Petitioner provided screenshots of printouts from the app for iPhone, AppAdvice, MacWorld, et. al.; however, the printouts do not appear to indicate the URL address, nor does the evidence appear to indicate that the Beneficiary has material

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (indicating that "[t]he description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes").
[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[4] *Id.*
[5] *Id.*

published about him in professional or major trade publications or other major media . . . ." The Director further indicated that the submitted material did not include "author attribution or publication information."[6] In addition, the Director noted that the Petitioner had not shown the circulation or readership of the publications relative to other media.

In the appeal brief, the Petitioner states that "[t]here is no way to assess the Apple App store through a URL. The app must be downloaded to an Apple-supported device." The Petitioner contends therefore that "USCIS is creating an impossible evidentiary standard for the evidence that was submitted." Requiring a URL helps USCIS determine the source of the submitted material, but this issue was not the only basis for the Director's determination that the Petitioner did not meet this criterion. As stated by the Director, the evidence did not show the published material was about the Beneficiary. Nor has the Petitioner presented comparative circulation or readership information showing that the articles were in major trade publications or other major media. For these reasons, the Petitioner has not established the Beneficiary meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

USCIS determines whether the person has acted as the judge of the work of others in the same or an allied field of specification.[7] The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization.[8] For example, a petitioner might document the person's peer review work by submitting a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.[9]

The Petitioner claims the Beneficiary meets this criterion based on recommendations he provided his colleagues in making hiring decisions for design roles. The record reflects the Petitioner submitted a letter from O-C-, co-founder of [redacted] who stated:

> I was fortunate to be able to first work with [the Beneficiary] beginning in 2009, when we recruited his company's design services for my company, [redacted]
>
> . . . .
>
> I have quite regularly relied on [the Beneficiary's] incredible design experience and talent, on not only leading projects, but also vetting and hiring designers for my companies. He is so exceptionally talented in mobile technology design, and has innate skills to judge candidates' qualifications, that we have asked him to participate in the screening and the hiring process for a number of our critical hires for design services.

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[6] This criterion states that evidence of the published material "shall include the title, date, and author of the material, and any necessary translation." *See* 8 C.F.R. § 204.5(h)(3)(iii).

[7] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

[8] *Id.*

[9] *Id.*

[redacted] is certainly more successful due to his valuable input on which candidates have the right skills and fit for our company.

O-C-'s letter does not elaborate and indicate who, when, and what specific work the Beneficiary purportedly judged. Moreover, the Petitioner did not show how O-C-'s letter establishes that vetting and screening job candidates constitutes serving as a judge of the work of others, consistent with this regulatory criterion.

In addition, the Petitioner presented a letter from B-Y-, General Manager of Consumer Marketing at [redacted] Telecommunications Company, who indicated: "[W]e have heavily relied on [the Beneficiary's] input and consulted with him when hiring for critical design roles in both [redacted] and [redacted] He is an excellent judge of talent and his insights have been invaluable in making hiring decisions for design roles." In response to the Director's RFE, the Petitioner offered a second letter provided by B-Y- asserting that the Beneficiary assisted his organization by "providing technical evaluations and creative insights that guided the hiring processes for critical design roles with my team." B-Y- further stated:

> Specifically, [the Beneficiary] assisted us in assessing potential candidates for UI and UX design positions, ensuring that their skills and creative vision aligned with our strategic objectives. His expert opinions were crucial in determining the suitability of these candidates for our projects, effectively serving as a jury to help us make informed decisions.

B-Y-'s letters, however, do not contain specific, detailed information reflecting probative evidence of the Petitioner's judging experience. For example, the letters do not include names of individuals or dates of judging. In addition, the Petitioner did not offer any evidence (such as candidate evaluation records) to support the claims in the letters. The Petitioner's submission of two letters from B-Y- that make vague claims regarding the Beneficiary's purported judging activity is insufficient to fulfill this criterion.

Without additional information or evidence reflecting the Beneficiary's participation as a judge of the work of others, including specific, detailed information, the Petitioner has not demonstrated the Beneficiary meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has the person made original contributions, but that they have been of major significance in the field.[10] As evidence under this criterion, the Petitioner submitted recommendation letters discussing the Beneficiary's product design work for the Petitioner, [redacted] and [redacted] The record also includes analytics data for the [redacted] apps. In addition, the Petitioner presented information about [redacted] as well as a share buyback agreement the Beneficiary executed with the company. The Director considered this documentation but found that

[10] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

it was not sufficient to demonstrate that the Beneficiary's work constituted original contributions of major significance in the field.

The Petitioner contends on appeal that the Director disregarded "the testimonials of experts in the field . . . without any analysis as to why their testimony was irrelevant." The Beneficiary's references discussed his product design projects at various companies, but their statements do not demonstrate the originality of his work and its major significance in the field.[11] As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Beneficiary has made to the field that have been considered to be of major significance.

Regarding the Beneficiary's product design work for [redacted] B-Y-, the company's former group sales and marketing director, asserted that the Beneficiary "lead the design of several critical projects that I was leading at [redacted] including the [redacted] Online Services App, [redacted] Phone Operating System Interface Redesign, [redacted] Streaming Service, and [redacted] Music App. While B-Y- indicated that the Beneficiary "has time and again delivered beyond all expectations, crafting world-class user experiences," the Petitioner has not shown that the Beneficiary's work for [redacted] has influenced the industry in a major way or has otherwise been considered important at a level consistent with original contributions of major significance in the field.

With respect to the Beneficiary's involvement with the development of the [redacted] app, S-A-, the Petitioner's Chief Executive Officer (CEO) and cofounder, stated:

> [redacted] (later renamed to [redacted] one of the projects we took on as part of 500 LABS, became the foundation for [the Petitioner] - as we decided to spin out the project as its own company and focus on it. Since the inception of the company, we've worked with [the Beneficiary] as a freelance designer where we created the first logo and branding for the app, he conducted research on comparable communication apps in the market such as [redacted] - and conducted user research on validating our product design idea with real users.
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> [The Beneficiary] has been a significant contributor to the design of the [redacted] application since its very beginning as a freelance designer and we have continued to work together on [redacted] since 2017. The design work that [the Beneficiary] has done for us was a critical factor in helping [redacted] achieve commercial success.

S-A- further claimed that "[t]he [redacted] application has garnered millions of downloads," but the record does not include analytics data to corroborate his assertion. The Petitioner has not demonstrated that this app has affected the field in a substantial way (beyond the Petitioner and its app users) or that the Beneficiary's contribution to the product otherwise constitutes an original contribution of major significance in the product design field.

In addition, V-B-, founder and CEO of [redacted] indicated that he "first met [the Beneficiary] in 2011" and "decided that he had the right skill set for our mobile app design needs, and he began working as

[11] While we discuss a sampling of the letters of support, we have reviewed and considered each one.

a freelance designer for [redacted] V-B- further stated that the Beneficiary "led our efforts in designing all of the branding assets and the mobile application design for [redacted] between 2011 and 2013. He played a critical role in making [redacted] a technological and commercial success." The Petitioner, however, has not demonstrated that the Beneficiary's work for this app rises to the level of an original contribution of major significance in his field.

Regarding the Beneficiary's product design work for the [redacted] apps, B-A-, a product manager at [redacted] stated:

> Our company recruited the product design services of [the Beneficiary] for several digital products I was product managing. These projects included [redacted] movie streaming apps in Turkey, and [redacted] music streaming applications in Turkey. [The Beneficiary] led the design of these projects end to end from user research to interface and user experience design. Every stakeholder including myself as product manager and engineers were extremely impressed by [the Beneficiary's] product and design savvy.

B-A-, however, does not offer specific examples of how the Petitioner's original work for [redacted] has influenced the field or industry to the extent that it is of major significance in the field. Nor has the Petitioner demonstrated that the level of attention received by the Beneficiary's specific work on these apps signifies that he has made original contributions of major significance in the field.

In this case, the recommendation letters offered by the Petitioner do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that the Beneficiary's specific product design work is viewed throughout his field, rather than by a solicited few, as having risen to the level of original contributions of major significance in the field. Courts have routinely affirmed our decisions concluding that 8 C.F.R. § 204.5(h)(3)(v) "requires substantial influence beyond one's employers, clients, or customers." *Strategati, LLC v. Sessions*, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019) (upholding an agency decision that held "[a] patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole."); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding agency decision that held evidence insufficient "because it did not show widespread replication of [the petitioner's invention]"). Here, the Petitioner has not shown that the Beneficiary's original work has affected his field at a level commensurate with contributions of major significance in the field.

For the reasons discussed above, the Petitioner has not established the Beneficiary meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

As evidence for this criterion, the Petitioner presented slides and photographic images of what are claimed to be the Beneficiary's speaking engagements. The language of the criterion at 8 C.F.R. § 204.5(h)(3)(vi) requires "authorship of scholarly articles" and the submitted documentation is not evidence of the Beneficiary's scholarly articles. As defined in the academic arena, a scholarly article

reports on original research, experimentation, or philosophical discourse.[12] It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.[13] Scholarly articles are also generally peer reviewed by other experts in the field of specialization.[14] For other fields, a scholarly article should be written for learned persons in that field.[15] "Learned" is defined as having "profound knowledge gained by study."[16] Learned persons include all persons having profound knowledge of a field.[17] Here, the Petitioner has not shown that the Beneficiary's presented work meets the requirements of a scholarly article. And even if the Petitioner had demonstrated the Beneficiary's authorship of a scholarly article, which it has not, the Petitioner has not shown that the Beneficiary's work was in a professional or major trade publication or other form of major media. Accordingly, the Petitioner has not established the Beneficiary meets the requirements of this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner presented its March 2022 letter offering the Beneficiary the position of "Director of Product Design" with a salary of $180,000.[18] In response to the Director's RFE, the Petitioner provided the Beneficiary's Form W-2, Wage and Tax Statement, showing that he earned $181,276 in 2023. As evidence the Beneficiary's salary is high relative to that of others working in the field, the Petitioner submitted February 2023 Foreign Labor Certification Wage Results for "Web and Digital Interface Designers" in New York. In addition, the Petitioner offered May 2021 "National estimates for Web and Digital Interface Designers" from the U.S. Bureau of Labor Statistics. However, the Petitioner did not offer comparable salary evidence pertaining to the Beneficiary's specific occupation as a "Director of Product Design." Specifically, the Beneficiary's position of a "Director of Product Design" indicates both a different and a higher job classification than a web and digital interface designer. Moreover, the position description for the Beneficiary contains further job duties and responsibilities than a web and digital interface designer, reflecting a managerial position.

To meet this criterion, the Petitioner must show that the Beneficiary has received a high salary in relation to other product design directors rather than web and digital interface designers. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995)

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[12] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* (citing to the *Oxford English Dictionary's* definition of "learned").
[17] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[18] This job offer letter describes the Beneficiary's position as follows: "You will start in a full-time position of Director of Product Design. In this capacity, you will perform duties related to but not limited to managing all aspects of product and user experience design, the design for our marketing and communications, managing and building our design team and ensuring effective communications and collaboration around design between our product, engineering and executive teams."

(comparing salary of NHL defensive player to salary of other NHL defensemen). Because the Petitioner did not provide sufficient evidence demonstrating the salaries of other product design directors, it did not establish the Beneficiary commands a high salary in relation to others in his field. Accordingly, the Petitioner has not established the Beneficiary fulfills this criterion.

III. O-1 NONIMMIGRANT STATUS

The record reflects that in 2022 the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, this approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). Nor are we required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Constr. & Design Co. v. Bureau of Citizenship & Immigr. Servs.*, 2008 WL 2074097 *5 (N.D. Ill. May 14, 2008) (describing as "prudent" that the AAO "assess each application on its own, rather than rubber stamping applications merely because of prior approvals"), *aff'd sub nom. Constr. & Design Co. v. U.S. Citizenship & Immigr. Servs.*, 563 F.3d 593 (7th Cir. 2009).

IV. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation that the Beneficiary meets at least three of the ten criteria.[19] Because the Beneficiary's inability to meet three of the initial criteria is dispositive of the appeal, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.[20]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Beneficiary has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even

[19] The Petitioner has not established the Beneficiary satisfies the criteria relating to awards, published material, judging, original contributions, authorship of scholarly articles, and high salary.

[20] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Beneficiary has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.